

Message Text

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SUBJECT: COOLEY LOAN DIVIDEND REMITTANCES AND PROFITS

BLOCKAGE PROBLEM: AMERICAN HOME PRODUCTS CORP (AHPC)

1. THEODORE GIUTTARI, ATTORNEY FOR AHPC, CALLED ON OFFICERS
OF OPIC AND DEPT AUG 24 TO EXPLAIN THE FIRM'S PROBLEM
WITH THE TURKISH GOVERNMENT AS SET FORTH IN PARAS 2-6
BELOW.

2. AHPC HAS BEEN OPERATING IN TURKEY AS WYETH LABORATU-
VARLARI A.S. (WLAS) SINCE 1961 IN ACCORDANCE WITH INVEST-
MENT DECREE NO. 4/13115 DATED MAY 6, 1960. WORKING CAPITAL
WAS PAID IN AS FOLLOWS:

TL 6,120,000 - FROM PL 480 FUNDS IN CASH

TL 6,390,000 - IN KIND (MACHINERY AND EQUIPMENT)

TL 255,000 - FROM TURKISH PARTNER H.Z. TUZUNER

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TL 12,765,000 - TOTAL

IN ADDITION, A WORKING CAPITAL OF TL 6,300,000 WAS PAID IN FROM TURKISH BANK LOANS AND INTERCOMPANY LOANS.

3. WLAS OPERATED AT A NET LOSS FROM 1961 THROUGH 1971. SINCE 1971 WLAS HAS MADE A PROFIT EACH YEAR BUT RETAINED

ALL EARNINGS AND PAID NO DIVIDENDS UNTIL DECEMBER 1975 WHEN IT DECLARED ITS FIRST DIVIDEND IN THE NET AMOUNT OF TL 5,700,000. THE TURKISH CENTRAL BANK INFORMED WLAS THAT IN ORDER TO OBTAIN FOREIGN EXCHANGE TO REMIT DIVIDENDS, THE TURKISH MINISTRY OF FINANCE REQUIRED THE FIRM TO DEPOSIT IN A BLOCKED NON-INTEREST-BEARING ACCOUNT WITH THE CENTRAL BANK TL 4,233,526, REPRESENTING PROFITS GENERATED BY USE OF AID LOAN FUNDS, PLUS TL 264,881 REPRESENTING PROFITS ATTRIBUTABLE TO SALES AND OTHER ACTIVITIES NOT AUTHORIZED UNDER WLAS' INVESTMENT DECREE.

4. AHPC/WLAS HAS NO OBJECTION TO MAKING THE LATTER SMALLER DEPOSIT BUT CONTENDS THAT THE TURKISH AUTHORITIES DO NOT HAVE THE LEGAL RIGHT TO DEMAND THAT WLAS DEPOSIT PROFITS ATTRIBUTABLE TO AID LOAN FUNDS (I.E., TL 4.2 MILLION) IN A BLOCKED NON-INTEREST-BEARING ACCOUNT AS A CONDITION FOR REMITTING DIVIDENDS.

5. AHPC CLAIMS THAT TL 10,600,000 OF COOLEY (AID) LOANS BORROWED CIRCA 1962 WERE FULLY PAID BY WLAS IN 1974. DESPITE REPEATED REQUESTS BY WLAS, MINFIN HAS NOT PROVIDED ANY EXPLANATION OF THE BASIS FOR ITS DECISION TO REQUIRE BLOCKAGE OF AID LOAN-RELATED PROFITS AS A CONDITION FOR DIVIDEND REMITTANCES. WLAS CLAIMS TO HAVE OBTAINED THE OPINIONS OF SEVERAL TURKISH LAWYERS THAT THE REQUIREMENT IMPOSED BY MINFIN IS ILLEGAL UNDER APPLICABLE TURKISH LAW AND REGULATIONS. WLAS ALSO MAINTAINS THAT CORRESPONDENCE OVER THE YEARS BETWEEN THE FIRM AND TURKISH AUTHORITIES, WHICH INDUCED THE FIRM TO PROCEED WITH AID LOAN-RELATED TRANSACTIONS, INDICATED THAT BLOCKAGE OF PROFITS DERIVED FROM AID LOAN FUNDS WOULD NOT OCCUR.

6. MR. GIUTTARI SAID THAT WLAS MANAGEMENT AND ITS TURKISH LIMITED OFFICIAL USE

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ATTORNEYS HAVE INFORMED AHPC THAT IT IS IMPERATIVE TO COMPLY WITH THE MINFIN REQUIREMENT OR RISK PROSECUTION OF THE WLAS MANAGEMENT (ALL TURKISH NATIONALS), FINES AMOUNTING TO SEVERAL HUNDREDS OF THOUSANDS OF TL, SUSPENSION OF WLAS OPERATIONS, AND EVEN POSSIBLE REVOCATION OF THE AHPC/WLAS INVESTMENT DECREE.

7. THE FIRM BELIEVES IT MUST MAKE A DECISION SOON BUT

WOULD LIKE TO HAVE THE BENEFIT OF USG EXPERIENCE WITH
COOLEY LOAN DIVIDEND REPATRIATION PROBLEMS. DEPT WOULD
APPRECIATE ANY INFORMATION EMBASSY AND CONGEN MIGHT BE
ABLE TO PROVIDE RE THIS CASE OR SIMILAR CASES. YOUR VIEWS
ON THE KIND OF APPROACH WHICH MIGHT BE MADE TO THE TURKISH
GOVERNMENT ON THIS PROBLEM WOULD ALSO BE WELCOME. KISSINGER

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